

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 817 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

JITENDRABHAI CHANDULAL SHAH

Versus

SECRETARY, NEW KAMDAR CO-OP. HOUSING SOCIETY

Appearance:

MR RN SHAH for Petitioner

MR VC DESAI for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 10/03/2000

ORAL JUDGEMENT

1. The appellant- original plaintiff has filed this appeal challenging the judgment and order dated 11th February 1980 passed in Civil Suit No. 891 of 1976 by the learned Civil Judge, Senior Division, Ahmedabad,

dismissing the suit with costs filed by the appellant plaintiff to recover an amount of Rs. 5108.25 with running interest at the rate of 6% p.a. from the date of the suit.

2. The plaintiff undertook to carry out the work of electrical fitting in 120 tenements of the respondent society under an agreement dated 23rd June 1972. It is the case of the appellant- plaintiff that he gave running bills from 4th August 1972 to 13th March 1974. The total amount of costs incurred by the appellant came to Rs. 26,108.25 and the respondent society paid Rs. 22000/- to the appellant and, thus, an amount of Rs. 4108.25 was outstanding from the respondent society to the appellant. The appellant also claimed Rs. 1000/- being the amount of earnest money deposited by him. The appellant served a notice dated 30th December 1974 to the respondent society, a copy whereof was sent to the District Cooperative Registrar. It is the further case of the appellant that he again reminded the respondent society on 11th September 1975 personally and the Secretary of the respondent society signed on the copy of the notice dated 11th September 1975. However, the dues of the appellant were not cleared by the respondent society and, therefore, the present suit.

3. The respondent, in their written statement, while denying the claim of the appellant, inter alia contended that the Court has no jurisdiction to entertain the suit and that the suit is barred on account of non compliance of the provisions of section 167 of the Gujarat Cooperative Societies Act as no statutory notice was given by the appellant to the Registrar of Cooperative Societies. The respondent denied that the appellant was paid only Rs. 22000/- or an amount of Rs. 4108.25 was outstanding. It is stated that the respondent society, in fact, paid an amount of Rs. 27,200/- to the appellant. It was stated by the respondent that on 29th June 1972, an agreement was entered into between the parties in respect of the electrical fitting work which was to be done in the tenements of the members of the respondent society. It is stated that under the agreement dated 29th June 1972, the work of electrical fitting was to be completed by the appellant within four months, failing which the appellant was, under the agreement, liable to pay penalty of Rs. 100/- per week. It is stated that while the work of electrical fitting was in progress, the old Managing Committee resigned on 23rd September 1973 in the meeting of the general body and in the same meeting of the general body, new managing committee was constituted. Some of the members of the society filed

Arbitration Suit no. 1920 of 1973 against the election of the new committee. The Board of Nominees, by its order dated 16th October 1973, issued an injunction in the said suit restraining the office bearers of the respondent society who were defendants no. 2 to 8 in the said suit from collecting any amount from the members of the society and making any payment to anyone in the capacity of such office bearers of the society. It is contended that the members who were newly elected in the meeting of 23rd Sept. 1973, therefore, could not collect any amount nor could they make any payment. In this situation, since the appellant was not prepared to continue the work unless the payment is made, an agreement was made with the consent of the appellant to the effect that the members of the society may make direct payment to the appellant for the said work and that amount will be adjusted by the appellant while computing his dues from the respondent. Pursuant to this arrangement, one of the members of the respondent society Sureshchandra Amrutlal and one Punjaji Mohtaji, husband of one Rajuben, a member of the society, collected various amounts and made payment towards the work of the society which was done by the appellant. According to Sureshchandra Amrutlal, he paid Rs. 700/- on 30.12.1973, Rs. 1000/- on 3.1.1974, Rs. 1000/- on 16.1.1974 and Rs. 1000/- on 5.2.1974 i.e. in all Rs. 3700/- were paid to the appellant towards the work of the society which he was doing under the agreement. Similarly, Punjaji Mohtaji also paid to the appellant for the electrical fitting work which was done by him. Thus, between 20.12.1972 and 16.4.1974, the members of the respondent society paid Rs. 5200/- to the appellant and with that amount, the appellant has received in all Rs. 27,200/- in respect of the work which was done by him. It is, therefore, contended that nothing remains to be paid to the appellant by the respondent society. It was further stated that the Arbitration Suit No. 1920 of 1973 was compromised on 25th March 1974 and on 19th April 1974, fresh election of the managing committee of the respondent society was held in which the same members were elected. Thereafter, the managing committee met on 23rd April 1974 and passed a Resolution No. 3 by which it was decided to give credit for the amount of Rs. 3700/- and Rs. 1500/- paid by Sureshchandra Amrutlal and Punjaji Mohtaji respectively and to debit those amounts in the name of the appellant in the books of accounts of the respondent society. Thereafter, on 3rd May 1974, as per the resolution of the managing committee and with the knowledge and consent of the appellant, the said amounts were debited in the name of the appellant and credited to the name of these two members. In these circumstances,

it is contended that the appellant was paid total sum of Rs. 27,200/- for the work of the society done by him and nothing remains due. It was further contended that Sureshchandra Amrutlal was serving in a mill and was not dealing in electrical goods and has not purchased any goods from the appellant. It is also stated that both the members who had made payments to the appellant were not having any other house except the tenement in the respondent society. It is stated that in the tenement house of Sureshchandra Amrutlal, extra work of Rs. 91/- was done for which payment was made by him. Similarly, Punjaji also made payment of Rs. 60/- for the extra work done in his house. These two persons have not got done any other work from the appellant. It was further contended that the appellant was liable to pay penalty of Rs. 100/- per week because he did not complete the work within the time stipulated and accordingly he was liable to pay Rs. 1800/- to the respondent society. It was then contended that it was not open for the appellant to ask for double payment for the work and having accepted the amounts of Rs. 3700/- and Rs. 1500/- from the members of the society, he was estopped from claiming the amount from the respondent society.

4. On the basis of the pleadings, the learned trial judge framed issues at Ex. 49. After appreciating the oral as well as documentary evidence, the learned trial judge, by the impugned judgment and order, held that the Court has jurisdiction to entertain the suit and also held that the suit is not bad for want of notice under section 167 of the Gujarat Cooperative Societies Act, 1961. On merits, the learned trial judge held that the appellant failed to prove that he is entitled to recover Rs. 4108.25 from the respondent society as an amount outstanding towards the bill and earnest amount. On the contrary, the learned trial judge held that the respondent has proved the payment of Rs. 5200/- made towards the remaining dues and deposit amount and, therefore, the appellant is not entitled to the suit claim. Finally, the learned judge held that the appellant is estopped from claiming the suit amount from the respondent society.

5. Mr.R.N.Shah, learned Counsel for the appellant, after having taken me through the evidence on record and the reasonings of the learned trial judge, contended that the learned trial judge has not properly appreciated the evidence on record. In the submission of Mr. Shah, the learned trial judge has committed an error in not relying upon the evidence of the appellant and his witnesses.

6. Mr.V.C.Desai, learned Counsel for the respondent supported the judgment of the trial court in toto.

7. It is an admitted fact that the appellant had received Rs. 22000/- from the respondent society towards the work done by him. The only dispute is with respect to the amount of Rs. 4108.25 towards the bills and Rs. 1000/- towards the refund of the deposit amount while according to the case of the respondent- society, they have paid a sum of Rs. 5200/- to the appellant which have not been credited by him over and above the amount of Rs. 22000/-. While narrating the facts, I have already stated in detail and pointed out as to why the balance amount of bills was not paid by the respondent society. Therefore, it is not necessary to repeat the said facts. In view of the fact that as the election of the managing committee of the respondent was challenged before the Board of Nominees, because of the interim order, the managing committee was restrained from making any payment and, therefore, arrangement was made whereby the appellant was to be paid the amount by the members in respect of the work done by the appellant through Sureshchandra Amrutlal and one Punjaji Mohtaji. Accordingly, the said Sureshchandra made the payment of Rs. 3700/- and Punjaji Motaji made payment of Rs. 1500/in order to see that the work continues during the injunction period. It is, however, the case of the appellant that the aforesaid payment was not made to him for the work of the society, but the said payment was made to him by the aforesaid two persons for the price of the goods sold by him to the said two persons and the said payment had nothing to do with the work done by him in pursuance of the agreement executed between him and the respondent- society.

8. The appellant is examined at Ex.50. He has not led any oral evidence by examining any witness while the society has examined its past Secretary Rajnikant Oza at Ex. 64, witness Sureshchandra Amrutlal at Ex. 91 and Punjaji Mohtaji at Ex. 92. The bills which were submitted by the appellant are at Ex. 19 to 32 and the receipts which the appellant had given for the amount received by him from Sureshchandra Amrutlal and Punjaji Mohtaji are at Ex. 51 to 55. Besides the aforesaid documentary evidence, there are other documents also on record. I will refer to the same at an appropriate stage.

9. The appellant in his deposition has stated that he had submitted bills for Rs. 24108.25 to the

respondent society against which he had received the payment of Rs. 22000/- only from the respondent society. He has stated that he is entitled to receive Rs. 24,108.25 from the respondent- society towards the bills and he has to recover Rs.4108.25 and refund of the deposit amount of Rs. 1000/-. He had given three notices Ex.33,39 and 40 to the respondent society. He has stated that the respondent society did not reply to these notices. He has further stated that Sureshchandra or Punjaji have not made any payment to him towards the work of the society. He has stated that Sureshchandra purchased goods worth Rs. 3700/- while Punjaji had also purchased goods worth Rs. 1500/- from him and the respondent society was not concerned with the said transactions. In the cross examination, he has stated that he is not maintaining any books of accounts, but he keeps notes in his diary in respect of the payments received. He has stated that he is not paying income tax, he has no shop. He has stated that on 25th May 1973, he had stopped the work of the society and thereafter on 13th January 1974, he had given bills to the society Ex. 29 and 30. He has stated that he was informed on behalf of the society that there was an injunction given by the Registrar's nominee and on being so informed, he had stopped the work. He has also stated that after the order of interim injunction, 60 to 70 members of the society had come to stay in the tenements. He has admitted that he has issued receipts Ex. 51 to 54 to Sureshchandra and receipt Ex. 55 to Punjaji. He has stated that he does not know whether Sureshchandra and Punjaji were dealing in electrical goods. He has admitted that he has not taken any receipt in respect of the goods supplied to Sureshchandra and Punjaji. He has also stated that at the time of delivering goods to Sureshchandra, he had not given any bills to him, but the goods were delivered and he had prepared one bill and sent to Sureshchandra. He has then stated that he does not remember as to when he had sent bills to Sureshchandra. He has stated that after placing the order with him for the goods and giving him money in advance, he had delivered the goods and he had noted the order of Sureshchandra and Punjaji in a rough pad. He has denied the suggestion that the payments were made by Sureshchandra and Punjaji to him under Ex. 51 to 55 in order to see that he continue the work of the respondent society. He has then stated that he did not till the institution of the suit that the amounts covered under Ex. 51 to 55 were debited in his account by the respondent society. However, he was constrained to admit that he came to know about this on seeing the balance-sheet of the respondent society. He has admitted

that he had done some extra work in the tenement of Sureshchandra and Punjaji as per the cash memos Ex. 61 and 62. Thus, from the deposition of the appellant, one thing is clear that it is not his case that he had done any extra work in the tenement of Sureshchandra and Punjaji for which the amounts of Rs. 3700/- and Rs. 1500/- respectively were paid by them under the receipts Ex. 51 to 55 to the appellant. Except the bare words of the appellant, no other evidence is adduced to show that he has sold goods to Sureshchandra and Punjaji in support of his assertion. The appellant could have produced duplicate bills in respect of the goods alleged to have been supplied to Sureshchandra and Punjaji and could have called upon them to produce the original bills. Sureshchandra and Punjaji who are Machine Operator in Ashok Mill and Jobber in Monogram Mills respectively have stated in their evidence that they are not dealing in electrical goods and they have not purchased such goods from the appellant. There is no cross examination on this important aspect. Reading the evidence of Ex-Secretary Rajnikant, it is clear that the Secretary and the office-bearers of the society were restrained from making any payment on behalf of the respondent society in pursuance of the interim order passed on 16th August 1973. This witness has stated that thereafter on 25th March 1974, the suit was compromised and accordingly it was decided to hold fresh election of the members of the managing committee on 19th April 1974. This witness was again elected as Secretary of the society. He has stated that all the tenements of the society were already constructed when the interim injunction was granted. He has stated that the appellant stopped the work because of injunction and, therefore, this witness as well as two other members of the society had gone to the house of the appellant and requested him to carry on the work. It is further stated that the appellant was conveyed that they would collect the money from the members of the society and that he should start the work on their assurance. According to this witness, it was agreed that the amounts were to be given by Sureshchandra and Punjaji on behalf of the society because the society was not in a position to make the payment due to the interim injunction. After this talk, the appellant resumed his work. According to this witness, Sureshchandra and Punjaji made payment to the appellant on behalf of the society for which receipts Ex. 51 to 55 were issued. He has stated that the payment by receipt Ex. 51 was made in his presence. He has stated that the receipts Ex. 51 to 55 were issued by the appellant in the name of these persons because due to the interim injunction, they could not be issued in the name

of the society. He has stated that the receipts Ex. 51 to 55 were given by Sureshchandra and Punjaji to the managing committee of the respondent society which passed Resolution on 23rd April 1974 recording that fact. He has stated that the amounts of Rs. 3700/- and Rs. 1500/- were given by these persons to the appellant for continuing the work of the society. He has also stated that a similar resolution was passed being Resolution No. 1 on that date in respect of the payments made to the contractor of the society by the members of the society due to operation of the interim injunction for the work of the society. According to this witness, the amounts of Rs. 3700/- and Rs. 1500/- were given by Sureshchandra and Punjaji to the appellant to continue the work of electrical fitting of the society and the receipts given by the appellant were resolved to be taken and the Secretary was advised to make payment of Rs. 3700/- and Rs. 1500/-.

10. The evidence of Rajnikant, Secretary of the society makes it clear that when the interim injunction was in operation, the office bearers could not make payment. The members devised an arrangement to make payment directly in order to obviate the difficulties which arose due to discontinuance of the work of electrical fitting by the appellant. Admittedly, the amounts covered under receipts Ex. 51 to 55 were received by the appellant through Sureshchandra and Punjaji. The society has made an entry Ex. 67 in the name of the appellant debiting the amount of Rs. 3700/- and Rs. 1500/- i.e. in all Rs. 5200/-. The cash book entry Ex. 67 also records that the appellant was given payment of Rs. 3700/- and Rs. 1500/- by Sureshchandra and Punjaji respectively to see that he continues the work of the society. This fact is also corroborated by the evidence of Sureshchandra who is examined at Ex. 91 and Punjaji, Ex. 92.

11. In view of this evidence, it is clear beyond any manner of doubt that the payments which were made to the appellant under the receipts Ex. 51 to 55 were in respect of the work of the society which the appellant had stopped because of the interim injunction issued by the Board of Nominees. The fact that the amount of Rs. 5200/- was given to the appellant for the work of the society is clear from the oral as well as documentary evidence as discussed above. Consequently, the appellant has failed to prove that the payment of Rs. 5200/- was made by Sureshchandra and Punjaji to him for the goods supplied by him to them. The payments which were accepted by the appellant are duly proved from the evidence on

record, namely the entries in the books of accounts, i.e. crediting these amounts in the name of the members and debiting in the name of the appellant.

12. In view of this, I am clearly of the opinion that the learned trial judge has rightly dismissed the suit filed by the appellant-plaintiff. Suffice it to say that no case is made out for any interference.

13. There being no substance in the appeal, it is dismissed with costs.

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